Government of Kerala
1978

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXIII] Trivandrum, Saturday, 29th July 1978 / 7th Sravana 1900 [No. 496

GOVERNMENT OF KERALA

Local Administration and Social Welfare (D) Department

NOTIFICATION

G. O. MS. 192/78/LA & SWD. *Dated, Trivandrum, 28th July, 1978.*

S. R. O. No. 759/78.—Whereas the term of Office of the Councillors of the Tirur Municipality was due to expire on the 31st March, 1978;

And, whereas, the Government have, in Notification No. G. O. MS. 65/78/LA & SWD dated the 29th March, 1978, published as S. R. O. No. 271/78 in the Kerala Gazette Extraordinary No. 222 dated the 29th March, 1978, directed that the term of office of the Councillors of the Tirur Municipality be extended for a period of four months from the first day of April, 1978;

And, whereas, it is now not expedient to conduct fresh elections of the Councillors of the Tirur Municipality alone;

Now, therefore, in exercise of the powers conferred by the Proviso to sub-section (1) of section 8 of the Kerala Municipalities Act, 1960 (14 of 1961) the Government of Kerala hereby direct that the term of Office of the Councillors of the Tirur Municipality be extended for a further period of two months from the first day of August, 1978.

By order of the Governor,

S. PERUMAL,
Deputy Secretary to Government.

33/2879/MC.

Explanatory Note

(This does not form part of the Notification but is intended to indicate its general purport).

The term of Office of the Councillors of the Tirur Municipal Council was due to exipre on 31-3-1978. The Government in Notification No. G. O. MS. 65/78/LA & SWD dated the 29th March 1978, published as S. R. O. No. 271/78 in the Kerala Gazette Extraordinary No. 222 dated the 29th March, 1978, have directed that the term of Office of the Tirur Municipality be extended for a period of four months from the first day of April, 1978.

The elections to the local bodies in the State have been postponed and it is now not expedient to conduct fresh elections of the Councillors of the Tirur Municipality alone. Government have therefore decided to extend the term of the Tirur Municipal Council for a further period of two months from 1-8-1978 invoking the powers under the proviso to sub-section (1) of section 8 of the Kerala Municipalities Act, 1960 (14 of 1961).

The notification is intended to achieve the above object.

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 6090/LA4/78. *Dated, Trivandrum, 29th July 1978.*

The Gwaliyor Rayons (Rayon Pulp Division) Taking over of Management Bill, 1978 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary
Legislative Assembly.

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3 3/2389/MC

Fifth Kerala Legislative Assembly

Bill No. 88

THE GWALIOR RAYONS (RAYON PULP DIVISION) TAKING OVER OF MANAGEMENT BILL, 1978

A

BILL

to provide for the taking over of the management of the undertaking of the Rayon Pulp Division of the Gwalior Rayons and Silk Manufacturing and Weaving Company Limited for a limited period in order to secure the proper management thereof and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS the Rayon Pulp Division of the Gwalior Rayons and Silk Manufacturing and Weaving Company Limited has not been working from the 30th November, 1977;

AND WHEREAS the production of rayon grade pulp has thus stopped;

AND WHEREAS such stoppage has also resulted in the unemployment of about twenty thousand workers employed in the collection and transport of raw materials and in other ancillary industries;

AND WHEREAS in the interest of the workers who are thus unemployed and in the public interest it is necessary to take over the management of the undertaking of the Rayon Pulp Division of the said company for a limited period in order to secure the proper management thereof;

BE it enacted in the Twenty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title and commencement.*—(1) This Act may be called the Gwalior Rayons (Rayon Pulp Division) Taking Over of Management Act, 1978.

(2) It shall come into force at once.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "company" means the Gwalior Rayons and Silk Manufacturing and Weaving Company Limited, being a company as defined in the Companies Act, 1956 and having its registered office at Nagda in the State of Madhya Pradesh;

(b) "controller" means the person or body of persons appointed as the controller under section 3;

(c) "notified order" means an order notified in the Gazette;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "Rayon Pulp Division" means the Rayon Pulp Division of the company at Mavoor in the State of Kerala;

(f) "undertaking" includes all assets, rights, lease-holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, stores, equipments, automobiles and other vehicles, cash balances, reserve funds, investments and book debts and all other rights and interests arising out of such property as were, immediately before the date of the notified order under sub-section (1) of section 3, in the ownership, possession, power or control of the company for the purposes of the Rayon Pulp Division, and all books of account, registers and all other documents of whatever nature relating thereto.

CHAPTER II

TAKING OVER OF MANAGEMENT OF UNDERTAKING

3. *Controller to take over management of undertaking.*—(1) The Government may, by notified order, appoint a person or body of persons as the controller of the undertaking to take over the management thereof.

(2) Any notified order issued under sub-section (1) shall remain in force for such period not exceeding two years as may be specified in the order:

Provided that if the Government are of opinion that in order to secure the proper management of the undertaking it is expedient that any such notified order should continue in force after the expiry of the period specified in that order, they may, from time to time, by notification in the Gazette, extend such period by not more than six months at a time, but no such notified order shall in any case remain in force for more than five years.

4. *Effect of notified order under section* 3.—(1) On the issue of a notified order under sub-section (1) of section 3 appointing the controller to take over the management of the undertaking,—

(a) all persons in charge of the management of the undertaking immediately before the date of the notified order shall be deemed to have vacated their offices as such;

(b) the controller shall alone be entitled, notwithstanding anything contained in any law for the time being in force, to manage the undertaking;

(c) as from the date of the notified order, the undertaking shall be deemed to be in the custody of the controller who shall, as soon as may be after such date, take such steps as may be necessary to take into possession or under his control all properties, assets and effects and all actionable claims comprised in the undertaking.

(2) Subject to the other provisions contained in this Act, the controller shall take such steps as may be necessary for the purpose of efficiently managing the affairs of the undertaking and shall exercise such other powers and perform such other duties as may be prescribed.

(3) The controller shall receive from the undertaking such remuneration and allowances as may be prescribed.

5. *Removal of controller.*—The Government may, if they are satisfied that the management of the undertaking by the controller is not in the interest of the undertaking, by notification in the Gazette remove the controller from office and appoint another person or body of persons as the controller:

Provided that no such notification shall be issued without giving the controller an opportunity to show cause against the proposed removal.

6. *No right to compensation for termination of office.*—Notwithstanding anything contained in any law for the time being in force, no person who ceases to hold any office by reason of the provisions contained in clause (a) of sub-section (1) of section 4 shall be entitled to any compensation for the loss of office:

Provided that nothing contained in this section shall affect the right of any such person to recover from the company moneys recoverable otherwise than by way of such compensation.

7. *Transfer of provident fund, etc., of officers and other employees to the controller.*—Where the company has established a provident, superannuation, welfare or any other fund for the benefit of the officers and other employees of the Rayon Pulp Division, such fund shall, with effect on and from the date of the notified order under sub-section (1) of section 3, stand transferred to, and vested in, the controller.

8. *Power of Government to cancel notified order under section 3.*—If, at any time, it appears to the Government on the application of the company or otherwise that the purpose of the notified order under sub-section (1) of section 3 has been fulfilled or that for any other reason it is not necessary that the order should remain in force the Government may, by notified order, cancel such order.

CHAPTER III

MISCELLANEOUS

9. *Duty to deliver possession of property and documents relating thereto.*—(1) As soon as may be after the issue of the notified order under sub-section (1) of section 3, every person having possession, custody or control of any property comprised in the undertaking shall deliver the property to the controller or to any person authorised by the controller in this behalf.

(2) Any person who, on the date of the notified order under sub-section (1) of section 3, has in his possession or under his control any books, documents or other papers relating to the undertaking shall, notwithstanding anything contained in any law for the time being in force, be liable to account for the said books, documents and other papers to the controller and shall deliver them to the controller or any person authorised by the controller in this behalf.

(3) The controller may take all necessary steps for securing possession of all properties comprised in the undertaking.

10. *Duty to furnish particulars.*—The company shall, within ten days from the date of the notified order under sub-section (1) of section 3, or within such further period as may be allowed by the controller in this behalf, furnish to the controller a complete inventory of all the properties and assets of the company as relates to the Rayon Pulp Division at the commencement of this Act, and of all liabilities and obligations of the company in relation to the said Division subsisting at such commencement and also all agreements entered into by the company in relation to the Rayon Pulp Division and in force at such commencement.

11. *Penalty for false statement.*—(1) If any person—

(a) when required by this Act or by any order made under this Act to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or believes to be false or does not believe to be true; or

(b) makes any such statement as aforesaid in any book, account, record, return or other document which he is required by any order made under this Act to submit,

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

(2) Any person who—

(a) having in his possession, custody or control any property comprised in the undertaking wrongfully withholds such property from the controller; or

(b) wrongfully obtains possession of any property comprised in the undertaking; or

(c) wilfully withholds or fails to produce to any person authorised under this Act, any register, record or other document which may be in his possession, custody or control; or

(d) fails without any reasonable cause to submit any accounts, books or other documents when required to do so,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

12. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

13. *Limitation on prosecution.*—No court shall take cognizance of an offence punishable under this Act except with the previous sanction of the controller or of an officer authorised by the controller in this behalf.

14. *Protection of action taken under the Act.*—No suit, prosecution or other legal proceedings shall lie against the Government or the controller or any other person for anything which is in good faith done or intended to be done under this Act.

15. *Over-riding effect of the Act.*—The provisions of this Act or any rule or order made thereunder shall have effect not withstanding anything inconsistent therewith contained in any law other than this Act or any instrument having effect by virtue of any law other than this Act.

16. *Application of Companies Act, 1956.*—For the removal of doubts it is hereby clarified that the Companies Act, 1956 (Central Act 1 of 1956), shall continue to apply to the Rayon Pulp Division in the same manner as it applied thereto before the date of the notified order under sub-section (1) of section 3.

17. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid, or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The Rayon Pulp Division of the Gwalior Rayons and Silk Manufacturing and Weaving Company, Limited, Mavoor, has not been working since November, 1977, and this has resulted in the unemployment of about twenty thousand workers employed in the collection and transport of raw materials and in other ancillary industries. Government are very much concerned about their massive unemployment and are convinced that in the interest of workers who are unemployed and in the public interest it is necessary to take over the management of the undertaking for a limited period in order to secure the proper management thereof.

2. Since the Legislative Assembly was not in session and situation warranted immediate action "The Gwalior Rayons (Rayon Pulp Division) Taking Over of Management Ordinance, 1978" was promulgated by the Governor on the 11th May, 1978, to achieve the above objective. However, in the judgement in O. P. No. 1530/78 a Division

Bench of the Kerala High Court struck down the Ordinance. An appeal against the judgement is being filed before the Supreme Court.

3. Even if the Ordinance is upheld by the Supreme Court it cannot have effect beyond a period of six weeks from the reassembly of the Legislature. Therefore, it is considered that a Bill containing the same provisions as in the Ordinance should be enacted so that the law can operate in case the judgement of the High Court is set aside by the Supreme Court. The Bill is intended for this purpose.

FINANCIAL MEMORANDUM

According to clause 3 of the Bill the management of the Rayon Pulp Division of the Gwalior Rayons and Silk Manufacturing and Weaving Company Limited, Mavoor will be entrusted to the Controller appointed by Government. Government will have to provide loan for margin money for the day to day working of the mill over and above what will be obtained from Banks on the security of stocks. Over and above this, some contingent expenditure may also have to be incurred for the proper running of the Rayon Pulp Division. This requirement is estimated to be about Rs. 50 lakhs per year.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 3 of the Bill seeks to empower the Government to appoint, by notified order, a person or body of persons as the Controller of the undertaking to take over the management thereof. Sub-clause (2) of that clause seeks to provide that any such notified order shall remain in force for such period not exceeding two years as may be specified in the order and that the Government may, from time to time, by notification in the Gazette, extend such period by not more than six months at a time, and that no such notified order shall in any case remain in force for more than five years.

Sub-clause (2) of clause 4 seeks to empower the Government to prescribe the powers that shall be exercised and the duties that shall be performed by the Controller. Sub-clause (3) of the said clause seeks to empower the Government to prescribe the remuneration and allowances that shall be received by the Controller from the undertaking.

Clause 5 seeks to empower the Government to remove the Controller from office by notification in the Gazette and after giving

him an opportunity to show cause against the proposed removal, if the Government are satisfied that the management of the undertaking by the Controller is not in the interest of the undertaking and to appoint another person or body of persons as the Controller.

Clause 8 seeks to empower the Government to cancel by notified order, the notified order issued under sub-clause (1) of clause 3 of the Bill if at any time it appears to the Government on the application of the company or otherwise that the purpose of the notified order has been fulfilled or that for any other reason it is not necessary that the order should remain in force.

Sub-clause (1) of clause 17 seeks to empower the Government to make rules to carry out the provisions of the Act.

The provisions proposed to be delegated are of an administrative nature. Further the rules after they are made are subject to the scrutiny of the Legislative Assembly. The delegation of Legislative power is thus of a normal character.

P. K. VASUDEVAN NAIR.